IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 248 of 1999
With
CRIMINAL APPEAL No. 393 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RADHESHYAM SHRIPRASAD GUPTA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MS BANNA S DUTTA for accused in both appeals
MR HL JANI, APP for State in both appeals

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 06/12/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. Criminal Appeal No.248 of 1999 has been filed by the original accused through jail authorities being aggrieved and dissatisfied with the judgment and order of conviction and sentence dated 5-1-1999 delivered by the learned Addl. Sessions Judge, Court No.16, Ahmedabad City, in Sessions Case No.4 of 1998 whereby the accused has been convicted to suffer imprisonment for life and to pay fine of Rs.1000/- in default, to undergo RI for one month for the offence under Sec.302 of IPC and also to suffer RI for 7 years and to pay fine of Rs.500/- in default, to undergo RI for fifteen days for the offence under Sec.307 of IPC while Criminal Appeal No.393 of 1999 has been preferred by the State for enhancement of sentence awarded to the original accused.

2. In this case, of the six family members, three persons namely, father, mother and minor daughter Chandni aged about one and half years succumbed to the injuries while three minor children namely, Hitesh, Pankaj and Janki sustained grievous injuries

rendering the surviving children to suffer a lot. Children, who survived by the grace of God being very minor and finding no shelter after having lost their parents, are staying in an orphanage.

3. The case of the prosecution in short is that a complaint was filed by the complainant Sumandevi, wife of Ganeshprasad Shriprasad, while she was admitted in the Civil Hospital on 3-9-1997 inter alia alleging that on 3-9-1997 at about 3.30 to 4.00 a.m., she, her husband Ganeshprasad Shriprasad, daughters Chandni and Janki and sons Pankaj and Nilesh were sleeping in their house situated at Rabari Colony, Odhav, Ahmedabad, when some one had poured acid on all of them as a result of that, all the members of the family received serious injuries and were taken to the Civil Hospital where they were admitted.

4. The Police Inspector, Natvarsinh Jagatasinh Champavat of Odhav Police Station on receiving the aforesaid information about pouring of acid on the entire family members went to the Emergency ward of Civil Hospital where they were admitted. He recorded the complaint of the injured Sumanben from the hospital and sent the same to Odhav Police Station for registering the offence. He also called FSL experts, dog squad, finger print experts etc. at the scene of offence. On

receipt of said complaint, it was registered as C.R.No.I-308 of 1997 with Odhav Police Station and investigation started.

5. In the meanwhile, as injured Ganeshprasad and his daughter Chandni succumbed to the injuries, the Police Inspector, Mr.Champavat prepared inquest panchnama in the hospital itself and also made arrangements to carry out post mortem on the dead body of deceased.

6. He then proceeded to the scene of offence, drew panchnama of scene of offence, recorded statements of various witnesses and seized muddamal articles such as burnt pieces of clothes, strings and control sample earth in presence of panchas by drawing panchnama. He then went to the house of accused Radheshyam from where he seized a bucket containing acid and burnt clothes in presence of panchas. The accused was arrested thereafter by preparing arrest panchnama. As the right hand of the accused was burnt, he was sent to Civil Hospital for treatment with police. He also recovered plastic tin and bucket at the instance of accused and same were attached under panchnama. During the course of investigation, the complainant Sumandevi also succumbed to her injuries on 11-5-1997. Therefore, Police Inspector of Odhav Police Station on receipt of vardhy from PSO about the death of Sumandevi went to the Civil

Hospital and drew inquest panchnama of deceased and also made arrangements to carry out the post mortem on the dead body of deceased Sumandevi.

7. All the muddamal articles seized were sent to the FSL for analysis and on receipt of post mortem reports of deceased persons as well as FSL reports, same were kept with the investigation papers. At the end of investigation, a charge sheet was submitted against the accused in the Court of learned Metropolitan Magistrate, Ahmedabad, on 16-11-1997.

8. As the offence alleged against the accused was exclusively triable by the Court of Sessions, the learned Metropolitan Magistrate committed the case to the Court of Sessions at Ahmedabad City where it was numbered as Sessions Case No.4 of 1998 and transferred to the Court of learned Addl. Sessions Judge, Court No.16, Ahmedabad City, for deciding it on merits. The learned Judge framed charge at Ex.5 against the accused. When the charge was read over and explained to the accused, he pleaded not guilty to the said charge and claimed for trial.

9. To prove the guilt against the accused, the prosecution examined in all, 13 witnesses namely, P.W.1, Kishankumar Radheshyam Gupta at Ex.10; P.W.2, Urmilaben Radheshyam Gupta

at Ex.15; P.W.3, Dr.Surendra Madanlal Yadav at Ex.18; P.W.4, Dr.Mukhtar Ahmed Shaikh at Ex.22; P.W.5, Ilejibian alias Chinubhai Mrugesh Naykar at Ex.29; P.W.6, Ashwinkumar Chhotusing Vaghela at Ex.38; P.W.7, Umeshbhai Somabhai Patel at Ex.39; P.W.8, Vinodkumar Lajjaram Gupta at Ex.40; P.W.9, Dr.Mayuriben Kantilal Shah at Ex.47; P.W.10, Janki Ganeshprasad Gupta at Ex.52; P.W.11, Umeshkumar Ratilal Patel at Ex.54; P.W.12, Ratansinh Becharsinh Chavda at Ex.56 and P.W.13, Natvarsinh Jagatsinh Champavat at Ex.59. Defense side has also examined Narsinh Balvantsinh as D.W.No.1 at Ex.80.

10.The prosecution also relied on various documentary evidence namely, complaint Ex.60; report of registering offence Ex.61, inquest panchnama of deceased Ganeshprasad Ex.62, inquest panchnama of deceased Chandni Ex.63; panchnama of scene of offence Ex.64; panchnama of person of the accused Ex.65; panchnama of place from where accused purchased acid Ex.55; inquest panchnama of deceased Sumanben Ex.57; death certificate of Ganeshprasad Ex.24; post mortem note of Ganeshprasad Ex.23; death certificate of Chandni Ex.26; post mortem note of Chandni Ex.25; death certificate of Sumanben Ex.20; despatch note Ex.66; FSL receipt Ex.67, opinion of FSL Ex.68 and copy of notification

Ex.69.

11.On submission of closing purshis by the prosecution, learned Addl. Sessions Judge recorded further statement of the accused under Sec.313 of the Code of Criminal Procedure. Thereafter, learned Addl. Sessions Judge, Court No.16, Ahmedabad City, upon affording opportunity of hearing to the learned advocates appearing for the respective parties and on an appreciation of evidence was of the view that the prosecution has successfully established the guilt against the accused for having committed the offence under Sections 302 and 307 of IPC and accordingly passed the impugned common judgment and order of conviction and sentence dated 5-1-1999 in Sessions Case No.4 of 1998 against the original accused as stated hereinabove.

12.Against the aforesaid judgment and order of conviction and sentence, Criminal Appeal No.248 of 1999 has been sent by the original accused through jail authorities while Criminal Appeal No. 393 of 1999 has been filed by the State for enhancement of sentence imposed upon the original accused.

13.As both the appeals arose out of the same judgment and order dated 5-1-1999 passed in Sessions Case No.4 of 1998 by learned Addl. Sessions Judge, Court No.16, Ahmedabad City,

they were heard together and are being decided by this common judgment.

14. Heard learned counsel, Ms.Banna S. Dutta for the original accused and learned APP, Mr.H.L.Jani for the State, in both the appeals.

15. On behalf of the original accused, it was mainly contended that the accused is totally innocent and has been falsely involved in the crime in question. It was further contended that there is no eye witness to the incident in question and, therefore, the Investigating Officer has falsely implicated the accused in the serious crime in question. The entire case of the prosecution is based on circumstantial evidence. However, the links in the chain of circumstances have not been proved by the prosecution beyond reasonable doubt and hence, the accused cannot be fastened with the serious offence of murder of his own brother, sister-in-law and their daughter and causing injuries to other children.

16. According to him, there are contradictions in the evidence of P.W.1, Kishankumar Radheshyam Gupta at Ex.10 and P.W.2, Urmilaben Radheshyam Gupta at Ex.15 and hence, their evidence should not be relied upon for basing conviction. It was further contended that the investigation has not been

carried out in a fair and impartial manner and hence, evidence of Investigating Officer, P.W.13, Natvarsinh Jagatsinh Champavat, Ex.59 should also not be relied upon.

17.It was next contended that the case history written by the doctor in the Civil Hospital of the accused is hit by Sec.26 of the Indian Evidence Act in view of the fact that it would be a confession of the accused while in police custody. It was ultimately prayed that the accused be set at liberty forthwith by giving benefit of doubt.

18.As far as the appeal filed by the State for enhancement of sentence awarded to the original accused is concerned, it has been contended by Ms.Banna Dutta that the case of the prosecution is based on circumstantial evidence and chain of circumstances is not completed. Only on the basis of suspicion, the accused has been convicted and, therefore, in any circumstances of the matter, case of the prosecution will not fall under rarest of the rare case as per the law laid down by the Apex Court and, therefore, it is requested that appeal for enhancement filed by the State requires to be dismissed.

19.Learned APP, Mr.H.L.Jani, has dawn our attention towards the evidence on record and contended that in this case, all family members sustained acid burn injuries from

their nearest relative i.e. younger brother of the deceased. There is evidence on record wherein a doubt has been created against him by his own son Kishankumar @ Bikhu and thereafter there are various circumstances linking the accused with the crime in question. It has been fairly contended that it is true that case of the prosecution is based on circumstantial evidence but he is not in a position to justify the appeal filed by the State for enhancement of sentence to death penalty.

20. Drawing our attention towards the evidence of doctors who performed the post mortem on the dead bodies of the deceased as well as the post mortem reports, it was contended that the dead bodies of the deceased bore acid burn injuries and same were sufficient to cause death of the deceased in the ordinary course of nature. Since all the circumstances have been proved by the prosecution beyond any manner of doubt, the sentence awarded to the original accused is required to be enhanced and he should be imposed with the death penalty for having committed the murder of his own brother, brother's wife and daughter Chandni and having caused grievous injuries to other children for no fault of theirs.

21.We have gone through the oral as well as

documentary evidence shown to us by the learned counsel appearing for the respective parties as well as through the reasoned judgment and order of conviction and sentence delivered by the court below.

22.For the purpose of deciding these appeals, evidence of following witnesses are required to be kept in mind.

23.The first witness examined by the prosecution is Kishankumar Radheshyam Gupta, P.W.1, son of the accused at Ex. 10. He has deposed that he and his father were sleeping outside their house situated opposite to the house of his uncle on the previous night of the incident. At about 3.30 to 4.00 a.m., he heard some shouts from his uncle's house, at that time, his father was was changing his clothes in the house. He has further deposed that since his father had a suspicion that his uncle had helped his mother in leaving the house with Ranjit with whom, the accused used to work, quarrel used to take place between his father and uncle. At that time, his father used to beat his uncle and give threat that acid would be poured on him. He has further deposed that before fifteen days of the incident, a plastic tin of acid was brought by his father. He has also deposed that after the incident, no acid was found in the said plastic tin. When this witness was

cross examined, nothing adverse came out so as to discard his evidence.

24.The next witness examined by the prosecution is P.W.2, Urmilaben Radheshyam Gupta, the wife of the accused at Ex.15. She has deposed that the accused had a suspicion that she had an illicit relation with one Ranjit, who was working with the accused, and hence, there used to be quarrel between her and the accused. She has further deposed that whenever quarrel takes place, she used to go to the house of Ganeshprasad and Sumanben. At that time, they used to take her side and that was not liked by the accused. She has further deposed that a complaint was lodged by her against her husband at the instance of Ganeshprasad and therefore, the accused drove her out of the house.

25.Another important witness examined by the prosecution is Janki Ganeshprasad Gupta, P.W.10, Ex.52. Of course, she is a child witness and therefore before recording her evidence, Court asked certain questions to her for ascertaining about the seriousness of giving deposition. When Court came to the conclusion that she was able to give her deposition having known about the consequences and seriousness of giving her deposition, her evidence was recorded by the court below. She has categorically deposed

that she is residing in an orphanage along with her two brothers Pankaj and Nilesh. She has further deposed that her uncle poured acid upon her mother, father and children including herself. Her father, mother, father and Chandni succumbed to the injuries while they three received serious injuries. She has further deposed that at the time of incident, they all were sleeping together in the house and at about 3.00 a.m., his uncle entered into the house and poured acid upon all family members. She has further deposed that thereafter her uncle changed his clothes and threw away the same in the field. While throwing the same, her cousin Bikha @ Kishankumar, son of the accused, has seen doing all these things. She has further deposed that she came to know of the said fact from him only. She has also identified the accused in the Court as the assailant. She was thoroughly cross examined by the learned counsel for the accused but nothing contrary came out shaking her evidence.

26. Another important witness is P.W.13, the Police Inspector, Natvarsinh Jagatsinh Champavat at Ex.59. He has deposed that on 3-9-1997 at about 5.55 a.m., since he received an information that acid was poured by somebody on six persons of a family at Rabari Colony, Odhav, Ahmedabad, and they were

admitted in Emergency ward of Civil Hospital, he went there. He also recorded the complaint of injured Sumanben and sent it to Odhav Police for registration. He has further deposed that he also arranged for calling FSL experts, Dog Squad, finger print experts etc. at the scene of offence. He has further deposed that since injured Ganeshprasad and his daughter Chandni died in the hospital, he went there to prepare inquest panchnama at Civil Hospital. He has further deposed that he also went to the scene of offence, recovered burnt pieces of clothes, strings and control sample earth in presence of panchas. He also went to the house of accused situated opposite to the scene of offence and recovered a bucket containing acid and burnt clothes in presence of son of the accused Kishankumar. He has further deposed that thereafter the accused was arrested. As the right hand of the accused was burnt, he was sent to Civil Hospital for treatment with police. Thereafter, he recorded the statements of witnesses and during course of investigation, recovered plastic tin and bucket at the instance of accused. Upon collecting sufficient evidence against the accused, he submitted the charge sheet against the accused on 16-11-1997. He has proved the complaint Ex.60, report sent for

registering the offence Ex.61 as well as inquest panchnamas of Ganeshprasad and chandni at Exs.62 and 63. He also identified all the muddamal and the accused in the Court. When this witness was cross-examined, nothing came out so as to discard his evidence.

27. Apart from the evidence of afore referred witnesses, there are other evidence on record connecting the accused with the crime in question. One such evidence is the evidence of Dr.Surendra Madanlal Yadav, P.W.4, Ex.18, who performed post mortem on the dead body of deceased Sumandevi. He has narrated the injuries received by Sumandevi and proved the post mortem note at Ex.19. He has deposed that injuries narrated in the post mortem note at Ex.19 were anti mortem and same were sufficient to cause her death in the ordinary course of nature. He has categorically deposed in paragraph 7 that injuries received by the deceased are possible if sulphuric acid is poured upon the victim while sleeping. Through the evidence of this witness, prosecution has proved the injuries sustained by deceased Sumandevi and has got other necessary evidence to prove the aspect of homicidal death of the deceased.

28. Another such evidence is the evidence of Dr.Mukhtar Ahmed Shaikh, P.W.4, Ex.22, the

doctor who performed post mortem on the dead bodies of deceased Ganeshprasad and Chandni. Through this witness, prosecution has proved injuries sustained by Ganeshprasad and Chandni and post mortem notes Ex.23 and 25 respectively.

29. Through the oral evidence of aforesaid two Medical Officers, prosecution is able to prove the injuries received by the three victims. The prosecution is also able to prove that those injuries are anti-mortem and are possible if sulphuric acid is poured upon them while they were sleeping and same are sufficient to cause death in the ordinary course of nature. Over and above, the prosecution has also proved the inquest panchnamas of deceased Ganeshprasad at Ex.62, Sumandevi at Ex.57 and Chandni at Ex.63.

30. In order to prove the injuries received by the three injured persons namely, Pankaj, Nilesh and Janki, the prosecution has examined Dr.Vinodkumar Lajjaram Gupta as P.W.8 at Ex.40. Through the evidence of this witness, the prosecution has proved the injury certificates Ex.43 of Pankaj, Ex.45 of Nilesh and Ex.46 of Janki. Dr.Vinodkuar has categorically opined that all the injuries could be possible if sulphuric acid is poured on them.

31. From the evidence of the afore referred

witnesses, the prosecution is able to prove the homicidal death of three deceased persons and the injuries sustained by the three injured children i.e. Pankaj, Nilesh and Janki. They have also accepted the suggestion that these types of injuries could be possible if somebody poured acid upon them while they were sleeping.

32.In view of the above, court below was right in holding that all the three deceased persons died homicidal death. Court below was also right in holding that the injuries sustained by Pankaj, Nilesh and Janki were due to pouring of acid upon them. We are also of the same opinion that death of the three deceased was homicidal and that injuries sustained by the minor children were due to pouring of acid upon them.

33.In order to sustain the evidence further, we have the reports of experts from Forensic Science Laboratory. It is to be noted that clothes worn by the accused at the time of incident has been seized under a panchnama Ex.65 where it has been categorically mentioned that sleeves of his bush shirt was having black dots and his right hand was also having fresh burn injury of acid. When said bush shirt was sent to FSL along with other muddamals seized at the instance of accused such as plastic tin, bucket, clothes worn

by the victims at the time of incident, etc. it has been categorically opined by FSL experts that muddamal articles A,B,D,E,F,G and H had presence of sulphuric acid while muddamal articles C and I did not have presence of sulphuric acid. This has been proved by the prosecution by way of FSL report Ex.66 along with forwarding letter.

34.To link the accused further with the crime in question, the prosecution has examined Dr.Mayuriben Kantilal Shah, P.W.9, Ex.47. She has categorically deposed that on 3-9-1997 at about 2315 hours, a patient named Radheshyam Shriprasad Gupta was brought with police yadi. She has recorded his history of injury wherein the patient has narrated the doctor that

Time of 4.00 a.m. and place of incident were also mentioned by him and same has been noted down by the doctor in the case paper in her own handwriting. Same has been proved by the doctor along with the injury by way of Ex.48. She has also deposed that when he was brought before her, he was fully conscious and on examination, she found that there were acid injuries on his right hand and it was brown in colour. Thus, the prosecution has also proved injuries received by the accused in the crime in question along with the history

given by him before Dr.Mayuriben Kantilal Shah clearly connecting the accused with the crime in question.

35.As far as motive is concerned, we have reproduced hereinabove the evidence of Urmilaben, P.W.2, Ex.15, who is the wife of the original accused. Through her evidence, prosecution has proved even motive behind the commission of offence also.

36.Thus, it is revealed that the original accused and victims are the nearest relatives and the accused is the younger brother of the deceased Ganeshprasad. It is also revealed that due to existence of dispute between the accused and his wife Urmilaben, various litigations were pending in the court of law. It is evidenced from the evidence of Urmilaben that as her husband i.e. the accused was doubting her character, she was being beaten by him. At that time, since she used to take shelter from the elder brother of the accused i.e. the victim Ganeshprasad, the accused did not like the same and hence, she was thrown out of the house.

37.From the aforesaid, the guilt against the accused has been proved by the prosecution by way of evidence of Kishankumar, injured Janki and other evidence which have been reproduced hereinabove by us. It is true that Kishankumar is the son of the accused but he,

at the earliest, narrated the incident before the police and same has been recorded by the police. He has deposed that when he and his father were sleeping in the house situated just opposite to the house of the victims, his father was changing the clothes having various black dots and said black dots clothes were thrown into the field. He has further deposed part of the incident which he has witnessed. He stuck to his version in the Court also which he narrated before the police. He has also identified the accused as the assailant in the Court. Apart from that, evidence of Janki is also fully corroborating the say of the prosecution. Not only that, even prosecution is able to prove that acid was brought by the accused from the factory of one Ashwinkumar Chotusingh Waghela, who has been examined as P.W.6 at Ex.38. Of course, he has not supported the case of the prosecution but has been declared as hostile. However, this aspect has been proved by the prosecution by way of evidence of Police Officer and other witnesses.

38.From the aforesaid, it is clear that it is a well planned act on the part of the accused that he with the definite intention of committing the offence purchased acid from one Ashwinkumar and poured acid on all the family members of his elder brother including

minor children when they were sleeping causing the death of his own brother, brother's wife and minor daughter aged about one and half years and causing severe injuries to other three minor chilidren. The empty plastic tin and bucket have been seized at the instance of accused. Presence of sulphuric acid on the pieces of clothes and other things seized from the scene of offence also corroborate the case of the prosecution.

39. From the entirety of the facts and circumstances narrated hereinabove, we are of the opinion that prosecution has proved through the evidence of doctors and post mortem notes that the deceased died homicidal death. Prosecution has also proved through various witnesses, FSL report and other evidence that the injuries sustained by the injured were due to pouring of acid upon them by the accused. Thus, prosecution has proved that it is the accused who has poured sulphuric acid on the deceased and injured while they were sleeping causing fatal injuries to the three deceased including the minor child aged about one and half years and causing grievous injuries to three children. Due to the aforesaid dreadful act of the accused, these three children have lost their parents and sister and have been rendered homeless. They were compelled to take shelter

in an orphanage and are residing there at present. Said heinous act of the cannot should not be viewed lightly.

40. In view of the above, we are of the opinion that the entire link in the chain of circumstances has been proved by the prosecution beyond reasonable doubt against the accused. Hence, we have no hesitation in agreeing with the findings arrived at and conviction and sentence recorded by the court below. Therefore, the impugned judgment delivered by the court below is required to be confirmed and accordingly we confirm the same. The appeal filed by the accused therefore deserves to be dismissed.

41. As far as the appeal filed by the State for enhancement of sentence imposed upon the accused is concerned, it is required to be noted that minimum sentence has been awarded by the court below. Moreover, court below has not accepted the request made by the State for imposition of death penalty and hence, the the appeal has been filed by the State for enhancement.

42. We have evaluated the evidence on record and have gone through all other aspects. We have also kept in mind the fact that there are no direct evidence on record connecting the accused with the crime in question. The whole case has been based on circumstantial

evidence and, therefore, on going through the entire record of evidence available with us, we are convinced that all the circumstances put together would not warrant imposition of death penalty as the prosecution story would not fall within the category of the rarest of rare cases. The Supreme Court has stipulated guidelines as to when a case would fall within the category of rarest of rare cases in the judgments in the cases of MACHHI SINGH AND OTHERS V. STATE OF PUNJAB (AIR 1983 SC 957) & KEHAR SINGH V. STATE (DELHI ADMN.) (AIR 1988 SC 1883). On a comparison of the facts of the present case with the facts of the said cases, we are of the opinion that the case before us does not fall within the category of rarest of rare cases and hence, there is no question of awarding any death penalty. In view of the above, the appeal filed by the State deserves to be dismissed.

43.Thus, both Criminal Appeal No.248 of 1999 filed by the accused as well as Criminal Appeal No.393 of 1999 filed by the State are dismissed. Impugned judgment and order of conviction and sentence dated 5-1-1999 passed in Sessions Case No.4 of 1998 by the learned Addl. Sessions Judge, Court No.16, Ahmedabad City is hereby confirmed.

44.Office shall place a copy of this judgment

in each appeal.

(R.P.DHOLAKIA,J.)

(K.S.JHAVERI,J.)

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